

William Cuthbert

1

✓  
1 TOWN OF EAST HAMPTON: STATE OF NEW YORK  
2 JUSTICE COURT

3 -----x  
4 THE PEOPLE OF THE STATE OF NEW YORK,  
5

6 DOCKET NO:14010313  
7

8 -against-  
9

10 CUTHBERT, WILLIAM,

11 DEFENDANT.  
12 -----x

Justice Court  
159 Pantigo Road  
East Hampton, NY  
October 14, 2014  
9:30 a.m.

13  
14  
15 B e f o r e:

16 STEVEN TEKULSKY, Town Justice

17 A p p e a r a n c e s:

18 THOMAS J. SPOTA  
19 SUFFOLK COUNTY DISTRICT ATTORNEY  
North County Complex - Building 77  
Veterans Memorial Highway  
Hauppauge, New York 11778  
20 BY: SEAN MCDONNELL  
21 Assistant District Attorney  
For the People

22 JOSEPH GIANNINI, ESQ  
23 P.O. BOX 1958  
AMAGANSETT, NY, 11930-1958

24 \* JURY TRIAL \*

1 Continuation of Witnesses

2 October 15, 2014

3

4 THE COURT: All right. Mr.  
5 Giannini.

6 MR. GIANNINI: At this time we  
7 call William Cuthbert.

8 THE COURT: He can take it with  
9 him. He can have his water, sure.  
10 Okay. Could you please raise your  
11 right hand.

12

13 WILLIAM CUTHBERT, a witness called on behalf of the  
14 Defense, was duly sworn by the Court and testified as  
15 follows:

16 THE COURT: Have a seat and in a  
17 loud, clear voice state your name.

18 A My name is William Elliot  
19 Cuthbert.

20 MR. GIANNINI: Please speak into  
21 the microphone and keep your voice up.

22 EXAMINATION

23 BY MR GIANNINI:

24 Q How old are you?

25 A I an 57 years old.

1 Q And where are you living right  
2 now?

3 A I live at 183 Hog Creek Road  
4 here in Springs.

5 Q And do you live with anyone  
6 there?

7 A Yes, I do. I live with my  
8 partner Jana Bennett -- Nishida.

9 Q How long have you lived there  
10 with her?

11 A Since 2000.

12 Q And are you currently employed?

13 A I have worked for myself for  
14 most of my life, yes.

15 Q What if anything do you do?

16 A Well I am a builder by trade.

17 Q And how long have you been  
18 doing that?

19 A Thirty five years, forty years.

20 Q You have your own business?

21 A Yes.

22 Q Do you recall the events of  
23 January 23, 2014?

24 A I sure do.

25 Q William, you have got to --

1 don't lean back anyone. Stay forward.

2 At around 9:30 that morning

3 where were you.

4 A About 9:30 I was either right  
5 on my way or in Goldberg's Deli.

6 Q Why were you going to  
7 Goldberg's?

8 A It's part of my usual daily  
9 routine at the time. Grab a breakfast, a  
10 coffee the daily paper.

11 Q Did you go anywhere from when  
12 you left Goldberg's Deli?

13 A Yes, I went down Napeague Lane  
14 in Amagansett.

15 Q Why did you do that?

16 A Sort of kind of part of my day  
17 where I take a look at the water and the  
18 ocean depending on which way the wind or  
19 weather is comes from.

20 Q Why do you do that?

21 A I am an extreme windsurfer and  
22 interested in the weather. It's the way I  
23 live.

24 Q And how long have you been  
25 doing wind surfing?

1 A 1987.

2 Q And did there come a time when  
3 you left Napeague Lane?

4 A Yes.

5 Q And where were you going if  
6 anywhere?

7 A I was heading back home.

8 Q And why was that?

9 A I was heading high back home to  
10 use the bathroom to prepare to drive to  
11 Gershows in Riverhead.

12 Q Why were you going to do that?

13 A Because in the back of my truck  
14 was completely filled with sorted recyclable  
15 brass, copper and number two -- all elements  
16 of metal that they pay for that they buy,  
17 and it has to be done in a very particular  
18 manner.

19 Q You mean you were going to sell  
20 these items?

21 A Everything was already prepared  
22 to bring to Gershow.

23 Q So you recall the weather that  
24 day?

25 A Absolutely.

1 Q Can you describe the weather as  
2 you were out on that date?

3 A First thing in the morning it  
4 was minus three degrees. Later on it warmed  
5 up to seven degrees and eight degrees was  
6 the high for that day.

7 Q And was there snow and ice on  
8 the ground?

9 A There was mostly ice as the  
10 snow had frozen.

11 Q Did you have any problems  
12 driving in the icy and snowy conditions?

13 A Well, I am particularly trained  
14 to drive in weather conditions.

15 Q Did you know how to handle in  
16 those conditions?

17 A I have driven in some of the  
18 countries most extreme storms that we have  
19 had.

20 Q What the kind of a vehicle were  
21 you driving that day?

22 A I was driving a Chevy 2500  
23 Series full size van.

24 Q Is that one of your work  
25 vehicles?

1 A Yes, it is.

2 Q How many work vehicles do you  
3 have then?

4 A I just have one work vehicle  
5 and another vehicle that we use when I am  
6 not doing construction?

7 Q Now did you have a jacket while  
8 you were driving around at that time?

9 A There were clothes, spare  
10 clothes in the cab of my vehicle as per  
11 usual.

12 Q Did you have a jacket on while  
13 you were driving around?

14 A No, I didn't.

15 Q Why not?

16 A My full size van is fully  
17 heated and had been running since the  
18 morning time and was probably almost 80  
19 degrees in the cab.

20 Q Did there come a time that you  
21 were driving north on Abrahms Path that  
22 morning?

23 A Yes.

24 Q Where you heading back to your  
25 home?

1 A I was heading back home.

2 Q Did you approach the  
3 intersection of Acabonac Road and Abrahms  
4 Path while you were driving?

5 A I did.

6 Q What if anything happened when  
7 you first got to the intersection?

8 A Well I slowed way down before  
9 the intersection because of the ice. There  
10 was no sand, no salt on the roads. Acabonac  
11 Highway was clear and Abrahms path was not.

12 Q Did you reach the intersection?

13 A I came to a full stop before  
14 the stop sign, before the stop line.

15 Q And when you reached the  
16 intersection at that point did you see any  
17 other vehicles?

18 A I looked through the  
19 intersection to be cautious because of the  
20 weather and I am trained. When I looked  
21 forward or up hill, Abrahms Path I see a  
22 speeding vehicle sliding down the road.

23 Q Were you looking up hill at  
24 that time?

25 A Yes.



1 Q Could you tell us exactly what  
2 the vehicle did as you were looking at it?

3 A As I was looking at the vehicle  
4 I saw it come over the horizon, my, my view  
5 of the horizon, and noticed the front end  
6 just drop. Apparently with the breaking.  
7 The car skidded off the road to the right.  
8 The car then continued and skidded cross all  
9 the way over two lanes, onto the left. Off  
10 the shoulder, then keeping her speed up the  
11 driver kept the car back on the road and  
12 went all the way across, back to the right  
13 side, and then continued through the  
14 snowbank and back to the road on the roadway  
15 onto the lane and through the intersection?

16 Q When that vehicle came through  
17 the intersection what if anything happened  
18 to you and your vehicle.

19 A She skidded through the  
20 intersection out of control. The tires were  
21 locked, not moving. The front tires were  
22 not moving at all. The antibrake system was  
23 obviously not working because the tires were  
24 not moving ands there was no bounce to the  
25 ADS system she slammed into the side of my

1 truck.

2 Q What side passenger or drivers  
3 side?

4 A Right on the drivers side.

5 Q After she slammed into your  
6 vehicle where did her vehicle go if  
7 anywhere?

8 A She bounced - she ricocheted  
9 -- she hit my car parallel, she ricocheted  
10 off my car and her front end bounced back  
11 towards her lane and her rear end did a 90  
12 degree and caught up with the front end  
13 bringing the car perpendicular to the her  
14 lane.

15 Q Was she blocking that lane at  
16 that time?

17 A Fully.

18 Q And were you still at the stop  
19 sign?

20 A I was.

21 Q Did there come a time when you  
22 got out of your van while you were there?

23 A I got out of the van almost  
24 right away. I got out of my van almost  
25 right away?

1 Q And while you where there  
2 parked or stopped at the stop sign did any  
3 other vehicle come up behind you?

4 A After a short while yes.

5 Q Do you remember what kind of  
6 vehicle that was?

7 A Yes, it was a short, brownish,  
8 or small brownish car behind me. Possibly  
9 an economy type sedan and there was a large  
10 honey pumper.

11 Q What do you mean by, "Honey  
12 pumper?"

13 A Well like a sewage truck. It  
14 was the extra large sewage truck.

15 Q And do you recall whether it  
16 was a diesel --

17 A It was a diesel. It was a  
18 large diesel.

19 Q Do you recall whether or not  
20 that diesel engine was making a lot of  
21 noise?

22 A It made a tremendous amount of  
23 noise.

24 Q And while you were outside and  
25 these vehicles were there did you go over to

1 that truck to speak with the driver?

2 A I sure did.

3 Q What if anything did you say to  
4 him?

5 A I went over as a favor to  
6 inform them that there had been an accident  
7 and the police had been called. And that  
8 they will be here any minute, and we could  
9 hear the sirens.

10 Q While you were there, right  
11 after the collision did you make any calls?

12 A Yes.

13 Q Who did you call?

14 A I called Jana.

15 Q Well, and did you reach her?

16 A Yes.

17 Q What did you say to heir?

18 A I asked her to call the police.

19 Q You didn't tell -- did you tell  
20 her to call 911?

21 A No.

22 Q Why did you tell her to call  
23 the police?

24 A Well there was a fender bender  
25 and 911 wasn't appropriate for the kind of

1 accident that we had, or that there was.

2 Q And do you know whether or not  
3 she did this?

4 A Yes, she did.

5 Q And did you call her again  
6 after that?

7 A Yes, I did.

8 Q What did you say to her?

9 A I asked her to come down.

10 Q When you made that second call  
11 where there any police on the scene?

12 A Not at that time.

13 Q Do you recall about what time  
14 you made the call to Jana that day?

15 A The first call was made at  
16 exactly 10:18.

17 Q How do you know that?

18 A It's on my phone.

19 Q And while you were parked --  
20 while you were parked at the stop sign did a  
21 police vehicle arrive at the scene.

22 A The police vehicle arrived and  
23 parked parallel to the cab on the honey  
24 pumper.

25 Q Was he parked on the drivers

1 side or the passenger side?

2 A He was parked on the drivers in  
3 the opposite lane.

4 Q And how long did he remain  
5 parked there along side of the truck?

6 A Ten minutes total.

7 Q Total. While he was parked  
8 there did you go over to him?

9 A I went up to him while he was  
10 parked there. I was walking up to the  
11 drivers side, talking through the drivers  
12 side to the gentleman in the honey pumper.

13 Q Did he tell you to move your  
14 van at that time?

15 A Yes.

16 Q Did you at that time start to  
17 walk back towards your van to move it?

18 A I did.

19 Q What if anything happened  
20 before you got -- did anything happened  
21 before you got there?

22 A I heard more loud talking, or  
23 almost yelling. I don't know if they were  
24 talking to me or not.

25 Q What did you do if anything?

1           A       I turned around to see if I was  
2   receiving instructions. I went and backed  
3   up to find out what the Officer wanted. I  
4   thought he was talking to me. I didn't know  
5   why.

6           Q       What if anything did he say at  
7   that point?

8           A       He was starting to get irate  
9   and told me to move my vehicle.

10          Q       And did you turn around then  
11   and walk back towards your vehicle?

12          A       Yes, I did.

13          Q       And what if anything happened  
14   when you were walking back to your van?

15          A       Walking back to my van there  
16   was glare ice on the road, so I am walking  
17   very carefully and the next thing I know  
18   there is a vehicle brushing up the left side  
19   of the my leg.

20          Q       And what if anything did you  
21   do?

22          A       Well in the construction and  
23   building trade what you are taught to do is  
24   slap the side of the car so that the driver  
25   knows where you are.

1 Q Did you do that?

2 A Absolutely.

3 Q What hand or hands did you use?

4 A I had to use my right hand  
5 because the car was so up against my left  
6 side.

7 Q We have talked about a police  
8 vehicle?

9 A Correct.

10 Q What kind of vehicle was it?

11 A It turned out to be a police  
12 SUV but at the I slapped it I had no idea  
13 who's car, what it was. There was loud  
14 noise so I never heard the car coming. I  
15 had to -- to my side the car seemed to plow  
16 me out of the way. This was a short  
17 vehicle. This is an SUV, a small economy  
18 type SUV. Not even a regular SUV.

19 Q As this vehicle was going by  
20 did you strike the passage side mirror?

21 A The mirror struck me. It's a  
22 short vehicle. I slapped the side of the  
23 car to let them know I was there and to turn  
24 away from me. To stop -- I was going to be  
25 sandwiched between that vehicle and my own



1 vehicle. I slapped the vehicle on the side  
2 with my right hand and before I even knew  
3 anything I was struck in the back by the  
4 mirror and turned right around 180 degrees.

5 Q Were you struck in your arm?

6 A I was struck on the back of my  
7 arm.

8 Q You have seen the photos that  
9 are in evidence now right, of your injuries?

10 A Yes.

11 Q And is there a photo in  
12 evidence now that depicts the injury that  
13 you got at that time to your left arm?

14 THE COURT: Giving the witness  
15 what has been marked as exhibits  
16 Defendant's Exhibits K through S in  
17 evidence.

18 A Yes.

19 Q Can you just hold it up for the  
20 Jury?

21 THE COURT: Just tell us on the  
22 back what Exhibit that is on the back.

23 Q What Exhibit is that on the  
24 back?

25 A Oh, S?

1 THE COURT: Yes.

2 Q Now did the police vehicle  
3 drive past you at that time?

4 A Yes, he did. He was driving --

5 Q Yes, or no?

6 A Yes.

7 Q Where did he go if you know?

8 A He made a sharp right turn and  
9 stopped right after the corner. Literally  
10 almost on top of the corner, or literally on  
11 top of the corner.

12 MR. GIANNINI: I would like to  
13 have this marked as Defendant's T.

14 THE COURT: Any objections?

15 MR. MACDONNELL: No objections.

16 (The above-referred to Photo was  
17 marked as Defendant's Exhibit T for  
18 identification, as of this date.)

19 THE WITNESS: Your honor, I don't  
20 appreciate that your court officer  
21 back there is smiling and finding this  
22 all quite amusing. He's making all  
23 kinds of faces and is smiling. I find  
24 it distracting.

25 Q Relax. He is smiling because

1 he is happy. He's a good man.

2 THE WITNESS: This is not an  
3 amusing subject.

4 MR. GIANNINI: Relax.

5 THE COURT: All right, so without  
6 objection that will be accepted as  
7 Defendant's T, in evidence.

8 Q Is that a fair and accurate  
9 depiction of the roads as they appeared on  
10 that date?

11 A Well it shows the road.

12 THE COURT: It's a map. It's  
13 doesn't show anything other than the  
14 streets themselves, right.

15 A Correct.

16 THE COURT: Does that accurately  
17 depict the intersection of Acabonac  
18 Road and Abrahms Path.

19 A From a birds eye view,  
20 absolutely.

21 MR. GIANNINI: I have an  
22 application to make it putting this  
23 into evidence.

24 MR. MACDONNELL: I have no  
25 objection.

1 THE COURT: Okay.

2 (The above-referred to Photos were  
3 marked as Defendant's Exhibit U  
4 through CC for identification, as of  
5 this date.)

6 Q Mr. Cuthbert, those photos are  
7 now in evidence. Now please pick up one at  
8 a time and tell us what it depicts?

9 A U, depicts looking west on  
10 Abrahms Path or looking up hill from the  
11 intersection.

12 Q Does that depict the hill that  
13 you saw the vehicle coming at you?

14 A Yes.

15 Q Put that aside pick up the next  
16 and tell us what Exhibit it is?

17 A V, this would be at the  
18 intersection, this would be Acabonac Highway  
19 looking at the intersection of Abrahms Path  
20 to the right is going toward Amagansett and  
21 left is toward Springs.

22 MR. GIANNINI: You know I think I  
23 am going to try and move this along as  
24 they are in evidence and we have been  
25 talking about them, I think they

1        should be published right now.

2                THE COURT: Sure. Go ahead.

3                That's fine.

4                (At this time the Jury has been  
5 published Exhibits U through CC. )

6                JURIST: Can I just ask a  
7 question?

8                THE COURT: You can't ask  
9 questions.

10               John that good /STKPW-PBLGTS.

11               THE COURT: Before you forward Mr.  
12 Giannini. Mr. Cuthbert, is it fair to  
13 say that Exhibits U through CC portray  
14 an intersection of two roads, Abrahms  
15 Path which runs north south and  
16 Acabonac Road which runs east west and  
17 various others roads therein?

18               A        This show an accurate portrayal  
19 of that area.

20               THE COURT: Very good.

21               Q        All right, William now stay  
22 close to the microphone.

23               Now did there come a time that  
24 Officer Trotta pulled in front of you  
25 Acabonac Road?

1 A Oh, yes.

2 Q And where were you when he did  
3 this?

4 A I was adjacent to the -- above  
5 the rear wheel of my own vehicle.

6 Q Now after he pulled over on  
7 Acabonac Road what did you do?

8 A I was on my way to my vehicle  
9 so and to move my vehicle so I continue to  
10 do so.

11 Q Did you move your vehicle at  
12 that point.

13 A I did so.

14 Q Where did you move it to?

15 A I pulled a right from the stop  
16 sign and went north on Acabonac, and just a  
17 few places down, I didn't want to park to  
18 close to the intersection and there was also  
19 a fire hydrant sticking out of the snow  
20 which I didn't want to park in from of also.

21 Q Did you park on Acabonac Road.

22 A Yes, I dis.

23 Q Did you park on the shoulder?

24 A Yes.

25 Q And what if anything did you do

1 after you parked the vehicle?

2 A I got out of the vehicle.

3 Q Why did you do that?

4 A To Officer Trotta who was  
5 standing by his car. I went over to talk to  
6 him.

7 Q And did you speak to him?

8 A Yes, I did.

9 Q And what was the first thing,  
10 if anything, you said to him at that time  
11 and point?

12 A Um, I think I requested a field  
13 Sargent.

14 Q Anything else.

15 A After that I asked him did he  
16 know if in fact he hit me.

17 Q Did he respond in any way?

18 A He did not respond at all.

19 Q What did you do when he didn't  
20 respond?

21 A I asked him one more time, did  
22 he know he hit me.

23 Q What if anything happened after  
24 you said that?

✓ 25 A Officer Trotta said to me, I

1 don't like your attitude, you are under  
2 arrest.

3 Q And did he tell you what you  
4 were under arrest for?

5 A He didn't like my attitude.

6 Q Anything besides that?

7 A No.

8 Q Did he mention the words  
9 disorder conduct?

10 A No.

11 Q Now after he said that did he  
12 cuff you?

13 A Oh, yes.

14 Q Explain to us how he cuffed  
15 you?

16 A First of all I completely  
17 complied with this Officer, completely.

18 Q Tell us what you did?

19 A I stood there and he turned me  
20 around, then he took my right arm and folded  
21 it up, he took my left hand and turned it  
22 the opposite way down and cuffed the two  
23 cuffs together as hard as he possibly could.

24 Q Were you in pain at that point?

25 A Instantly and in shock.



1 Q Did you shove him?

2 A Never.

3 Q Did you push him?

4 A Never.

5 Q Did you strike him?

6 A Never.

7 Q Did you resist in any way?

8 A Never resisted in any way.

9 Q How much do you weigh?

10 A I weigh a hundred and  
11 ninety-one pounds.

12 Q And um, I am going to show you  
13 something again for the record. My hands  
14 are behind my back, one on top of the other  
15 and is this the way he handcuffed you?

16 A Actually the right hand was up  
17 high and the left hand was twisted down so  
18 it would be opposite of what you have now.

19 THE COURT: Just switch your hands  
20 counsel, the right hand is the higher  
21 one. Is that what you are saying Mr.  
22 Cuthbert?

23 A Yes.

24 THE COURT: For the record, Mr.  
25 Giannini has his hand behind his back

1 with this right hand right above his  
2 left hand.

3 A But they were twisted in  
4 opposite directions.

5 Q What if anything did he do to  
6 you after you were handcuffed in that  
7 manner?

8 A He left me and walked away.

9 Q Where did he go?

10 A He went over to talk to the  
11 woman who's car skidded through the  
12 intersection.

13 Q Did you remain at the scene?

14 A I remained right where I was.  
15 I was absolutely frozen in terror and pain.

16 Q Did he come back?

17 A He came back eventually after.

18 Q While he was away what if  
19 anything happened to you?

20 A I did my best to try and keep  
21 my right hand and my left hand from not  
22 fighting each other and as was I standing  
23 there trying to concentrate with all my  
24 might my hands start swelling up while  
25 slowly my nerves were being cut. All the

1 nerves around each wrist slowly being cut  
2 and severed. My hands were swelling up and  
3 going numb. You could feel my wrist  
4 swelling and cutting against the cuffs. I  
5 eventually passed out and fainted. My eyes  
6 went white, my ears went white noise.

7 (Whereupon the witness made a  
8 hissing noise.)

9 And I found myself on the ground  
10 un front of the officer's SUV.

11 Q And then did there come a time  
12 when they picked you up off the ground?

13 A Not at that moment.

14 Q Did there come a time when they  
15 picked you up?

16 A Yes.

17 Q When you were picked up from  
18 the ground were there more than one officer  
19 there?

20 A No.

21 Q Who picked you up?

22 A Trotta.

23 Q What did he do with you if  
24 anything?

25 A Yeah, he worked me over and

1 threw me on the hood of the car, and um, I  
2 had been calling for help very loudly before  
3 he had come over.

4 Q You were calling?

5 A Calling out loud for help.

6 Q Why were you calling for help?

7 A I was in extreme pain. I was  
8 being tortured?

9 Q Now, when he had you on the  
10 hood -- withdrawn.

11 Was that the hood of his  
12 vehicle that he had you on?

13 A Yes, it was.

14 Q And you were handcuffed?

15 A I was handcuffed, if you call  
16 it that.

17 Q And while you were on the hood  
18 did any other Officers arrive, yes or no.

19 A Yes.

20 Q Who was that, if you know?

21 A Turns out that was Officer  
22 Barry Johnson.

23 Q And at any time did you push  
24 Officer Johnson?

25 A Never.

1 Q Did you strike him?

2 A No.

3 Q Did you kick him?

4 A No.

5 Q Did you plead with them, at  
6 that time to loosen the cuffs?

7 A I pleaded with the Officer  
8 Barry Johnson the moment he came over. And  
9 I turned to show him what Trotta had done to  
10 me.

11 Q Did they loosen the cuffs?

12 A Not at all.

13 Q Where you in pain?

14 A Extreme pain. Extreme pain  
15 duress, beyond --

16 Q Relax. Hold on.

17 You heard them say during their  
18 testimony that they took you off the hood of  
19 the car, is that true?

20 A They lifted me straight back  
21 off the car. Straight back and when I  
22 instinctively tried to catch myself from  
23 falling back they yelled, "He's resisting,  
24 he's resisting, get him."

25 Q And you were cuffed at this

1 time?

2 A Exactly.

3 Q And were you resisting?

4 A It was impossible for me to  
5 resist in any capacity.

6 Q How many Officers were around  
7 you at that time?

8 A Three.

9 Q And did they put you in a  
10 seated position at that time?

11 A Wherever the Officers had me  
12 standing prior to this they had been working  
13 me over. So there is something, you know,  
14 so after they lifted me off the car, after  
15 they were literally torturing me, it was  
16 such --

17 Q Listen, we just want to know?

18 A They took me and they pulled me  
19 straight back -- there had been a crater  
20 created by the Officers feet and they put me  
21 stomach first in this crater and Officer  
22 Johnson slammed his knee into my back, the  
23 small of my back and started pounding my  
24 back and his knee worked down to the center  
25 of my back.

Knee  
in  
back

1 Q All right?

2 A All while taking my arms and  
3 shoving them over my head with my face into  
4 the frozen ground. This was not flat, this  
5 was not flat at all this was an actual  
6 crater.

7 Q You mean like a gully along the  
8 road?

9 A Like a hole.

10 Q And how long were you on your  
11 face in the snow and ice at that point?

12 A Right up until Jana arrived.

13 Q Did of see her at the scene?

14 A No, I heard her.

15 Q And while she was there were  
16 you pleading with them to unloosen the  
17 cuffs?

18 A I pleaded with them the whole  
19 time.

20 Q Did you start using curse  
21 words, like fuck you, you fucking assholes?

22 A Absolutely. When they started  
23 working me over.

24 Q When you say, "Working me  
25 over," you mean pushing your arms up towards

1 your head.

2 A Not just that while Officer  
3 Johnson was shoving my twisted cuffed arms  
4 over my head he was screaming in my ear for  
5 other ten minutes, and he kept knocking his  
6 knees in the back of my knees so I would  
7 lose my support and actually hang.

8 Q You mean when you were on the  
9 hood of the car?

10 A Yes, he was torturing me.

11 Q Relax. Torture is a conclusion  
12 we just want to know what they did to you.

13 Now how long do you think you  
14 were cuffed before they actually took you  
15 away from the scene?

16 A It's very hard, once they put  
17 the cuffs on me what would be normally  
18 minute by minute went into microsecond to  
19 microsecond so my timing would be slightly  
20 soiled. It seemed like hours and hours.  
21 That's what it seemed like. Every second  
22 as every pulse of my blood to my wrist was  
23 cutting --

24 Q I just want to know how long  
25 you were out there cuffed before they took



1 you from the scene?

2 A An hour.

3 Q It seemed like an hour?

4 A It seemed like an hour.

5 Q Now when you were removed from  
6 the scene was Jana there?

7 A Yes, she was.

8 Q Stay by the mike.

9 Did you hear Jana plead for  
10 them to place you in a police car.

11 A Yes, I did.

12 Q Did they listen to her?

13 A No at all.

14 Q Did there come a time that they  
15 moved you from a to seated position over to  
16 the police car for transportation?

17 A Yes.

18 Q Can you describe what they did  
19 to you from the seated position until the  
20 time they put you in a car for  
21 transportation?

22 A They just lifted me off the  
23 ground by my elbows.

24 Q By what?

25 A My elbows.

1 Q Who was that?

2 A Um, Johnson and um the younger,  
3 I think it's Rantinella.

4 THE COURT: Officer Rantinella?  
5 Is that it Mr. Cuthbert.

6 A Yes, I think so, I think it was  
7 those two.

8 Q All right. Did they drag you  
9 from where you seated cross the road to the  
10 vehicle for transport?

11 A Yes, they did.

12 Q And do you know how many feet  
13 that was?

14 A Across two lanes. So it's at  
15 least twenty feet.

16 Q When they stood you up did you  
17 have any use of your legs?

18 A They never really stood me up  
19 so, no I had no use of my legs.

20 Q Why was that?

21 A My legs were frozen completely,  
22 as way my prostate.

23 Q And when they put you in the  
24 car for transportation did they tie your  
25 legs to the handcuffs in some way?

1 A Yes, they did?

2 Q Did they extend your legs back  
3 towards your arms?

4 A Yes, they did.

5 Q While you were there at the  
6 scene did any pedestrians gather around?

7 A I saw no pedestrians other than  
8 the woman that had skidded through the  
9 intersection.

10 Q If you know, are there any  
11 houses nearby that intersection?

12 A It's only the golf course.

13 Q That's a good ways off the  
14 intersection, is it?

15 A It's part of the intersection  
16 and on both sides of the street. The golf  
17 course is on both corners, adjacent corners.

18 Q And when you were transported  
19 back or transported to the precinct did you  
20 request the driver of the vehicle to help  
21 you or to loosen the cuffs?

22 A I had toll him what had  
23 happened.

24 Q And did he help you at all in  
25 any way?

1 A No, he said he couldn't.

2 Q What about the traffic  
3 conditions, would you describe it as light,  
4 medium or heavy at the time of the incident?

5 A More than light, sparse. Or  
6 less than light, sparse. Sorry.

7 Q While you were in custody at  
8 the precinct did you request medical  
9 treatment?

10 A Yes, I did.

11 Q Did you get any medical  
12 attention?

13 A Got no medical attention.

14 Q Did there come a time that you  
15 were released from headquarters?

16 A There had come a time, yes.

17 Q Did you in fact -- did they  
18 allow you to bail yourself out?

19 A They did hours later.

20 Q How many bail did you put up to  
21 be released?

22 MR. MACDONNELL: Objection, Judge.

23 THE COURT: Relevance? Sustained.

24 Q But you did bail yourself out?

25 A I bailed myself out.

DAT

1 MR. GIANNINI: I have no further  
2 questions.

3 THE COURT: Thank you, Mr.  
4 Giannini. Mr. MacDonnell are you  
5 ready.

6 MR. MACDONNELL: Yes, Your Honor.

7 THE COURT: All right.

8 CROSS EXAMINATION

9 BY MR. MACDONNELL:

10 Q Mr. Cuthbert, I am going to  
11 attempt to ask you questions that are  
12 basically yes or no questions. If you  
13 answer yes or no, I would appreciate it. If  
14 you need me to rephrase the question I will.

15 Mr. Cuthbert, after you go  
16 breakfast you went down to Napeague Lane to  
17 check out the wind?

18 A To checkout the wind, waves and  
19 tides, yes.

20 Q Did you have any intention to  
21 go out windsurfing that day?

22 A Not that day, no.

23 Q But it's normal routine, it's a  
24 peaceful morning for you to generally go  
25 grab breakfast and check out the wind?

1 A Correct.

2 Q And then you were going to go  
3 back and use the restroom and recycle some  
4 metal so you could get some more money?

5 A I prepared my truck for days.  
6 I collect my recycles during the year while  
7 I work and then during extreme times,  
8 weather, times of rain or slack in business  
9 I will work on my recycles.

10 Q So you can make some money?

11 A Yes.

12 Q Whether it's to take your  
13 girlfriend out to dinner, groceries,  
14 whatever you needed to make more money?

15 A Actually it's mostly to do my  
16 part for the earth. I have been recycling  
17 my whole life since the seventies.

18 Q And you stated the recycling  
19 area requires it to be done a certain way,  
20 in a meticulous fashion to recycle?

21 A That is correct.

22 Q And you had it all done in the  
23 back of the vehicle, in this van you were  
24 driving?

25 A It was ready to go. Completely

1 sorted and completely boxed.

2 Q It was because you were driving  
3 home you were then involved in the accident?

4 A (No response.)

5 Q While you were driving back to  
6 your house you were involved in the  
7 accident?

8 A Yes.

9 Q You weren't going to be able to  
10 go to the recycling center at this point  
11 now, right?

12 A I certainly would have.

13 Q But you had to stop and wait,  
14 transfer information with the other driver  
15 and maybe call the police?

16 A If the driver had been  
17 cooperative.

18 Q You would call the police  
19 before you got out of the vehicle but you  
20 called your girlfriend?

21 A No, that is not what was said  
22 here. I got out of the vehicle tried to  
23 communicate with the woman. She didn't  
24 speak much English and she was so shook up  
25 within the first word she was screaming like

1 a crazy woman. Like a crazy person.

2 Q So she is acting crazy and you  
3 decide to call your girlfriend instead of  
4 you directly calling the police?

5 A Correct.

6 Q And then you called your  
7 girlfriend a second time?

8 A Yes.

9 Q What did you do during the time  
10 between the first time you called your  
11 girlfriend and the second time?

12 A Cars had started to come up  
13 and, oh I called her because -- that's right  
14 -- I called her because I had a hard time  
15 finding my insurance paper and my  
16 registration.

17 Q Cars started to come -- did  
18 they ask you to move your car?

19 A No, no one asked me to move my  
20 car. None of the vehicles asked me to move  
21 my car. There was just the one single small  
22 car behind me and one extra large honey  
23 pumper behind that vehicle.

24 Q And that was Mr. Brockway who  
25 come in today that testified, that would be



1 he immediately had a conversation with Mr.  
2 Brockway?

3 A Yes.

4 Q At no point did he speak to you  
5 at that point?

6 A He spoke to me when I walked up  
7 to his vehicle after he had been talking to  
8 the driver of the honey pumper.

9 Q Is your vehicle was in front of  
10 his with damage on your car but he spoke to  
11 Mr. Brockway first?

12 A No, I spoke to the gentleman  
13 that was actually parked in front of Mr.  
14 Brockway. There was another vehicle that he  
15 didn't even remember. I spoke to that  
16 gentleman first then I spoke to Mr.  
17 Brockway.

18 Q And you had a calm conversation  
19 with this other driver and Mr. Brockway?

20 A I certainly did. I was doing  
21 these people a favor of informing them what  
22 had happened and why the traffic was not  
23 moving and the cops were already called and  
24 should be there any minute.

25 Q In case they didn't see the two

1 people that were in front of them that were  
2 perfect view to the road, you were giving  
3 them a curtesy of letting them know what was  
4 going on?

5 A What vehicles had perfect view  
6 of the road.

7 Q Well your car was there and the  
8 over vehicle that struck you was  
9 perpendicular to the road?

10 A And the singular vehicle, yes  
11 there was a singular vehicle that was  
12 perpendicular road sir.

13 Q And now you were able to have a  
14 conversation with Mr. Brockway and explained  
15 to him what happened over the volume of his  
16 car?

17 A I tried to, yes.

18 Q And you were able to hear what  
19 he was saying to you?

20 A No.

21 Q You couldn't hear anything that  
22 he said to you?

23 A It was very hard to hear, and  
24 it wasn't until he tried to speak to me that  
25 I realized he was having and extremely hard

1 time listening to me.

2 Q And at some point while you  
3 were conversing with Mr. Brockway Officer  
4 Trotta showed up?

5 A Correct. I, I, I, I had only  
6 spoken to Mr. Brockway for a minute or two.  
7 It just took moments to tell him what had  
8 happened. I was walking back to my car when  
9 Trotta pulled up --- hold up, oh, oh, I am  
10 sorry, I walked over -- after speaking with  
11 Mr. Brockway, I walked over to the vehicle  
12 going perpendicular that's when I realized  
13 there wasn't a tread on her wheels. Her  
14 wheels where completely bald, completely  
15 bald.

16 Q And you were angry, she was  
17 driving a car in the snow and ice?

18 A Yes. Was I angered?

19 Q Yes.

20 A No, I wasn't angered. Was I  
21 alarmed? Yes, was I alarmed that someone  
22 would be out in this kind of condition with  
23 bald tires. Oh, yes. That is like carrying  
24 a loaded gun into an elementary school bus.

25 Q Especially for you who have

1 been trained to drive in these dangerous  
2 conditions, seeing her car swerve, speeding  
3 across the road with bald tires that has got  
4 to make you somewhat angry, right?

5 A What do you think.

6 Q I am saying you were  
7 aggravated, upset and mad that the vehicle  
8 you were involved in the accident had bald  
9 tires and wasn't being careful as she was  
10 driving down the road?

11 A You sound like the lies that  
12 the police are telling.

13 Q Sir, I am asking you questions,  
14 answer my question is all you can do.

15 A What was your question again?

16 Q From what you said during  
17 direct you saw the vehicle swerve across the  
18 road once, come back across the second time  
19 and started speeding down the hill first?

20 A Saw the vehicle speeding going  
21 side to side. Why would that anger me?

22 THE COURT: The question was, did  
23 it anger you?

24 A No.

25 Q You heard Officer Trotta tell

1 you to move your vehicle to the side of the  
2 road?

3 A No, I couldn't hear him at  
4 first. It wasn't until he had to repeat  
5 himself.

6 Q But you heard him eventually?

7 A I heard him eventually.

8 Q You had a conversation with  
9 Officer Trotta after you removed the  
10 vehicle?

11 A Yes.

12 Q You were upset, you were mad  
13 that he hit you?

14 A I wasn't mad --

15 Q Just answer the question.

16 A No.

17 Q You were involved in an  
18 accident with a car that had no tread on the  
19 tires and you were hit by a police officer,  
20 you weren't mad?

21 A I was annoyed. But that is not  
22 mad.

23 Q But you continued to comply  
24 with Officer Trotta's instructions.

25 A Yes, I did.

1 Q And you asked for another  
2 officer to come down to the scene?

3 A I asked for a field Sargent.

4 Q And he ignored you? Officer  
5 Trotta ignored you and didn't respond?

6 A Correct.

7 Q And he then told you he was  
8 putting you under arrest for disorderly  
9 conduct -- he was placing you under arrest  
10 for some reason didn't say why?

11 A He did say why.

12 Q Why was that?

13 A He didn't like my attitude.

14 Q And you put both hands behind  
15 you back immediately for him?

16 A Yes, I did. I made it very  
17 easy.

18 Q Just answer. Did you put your  
19 hands behind your back?

20 A Yes.

21 Q I understand so just a yes or  
22 no, there is no need for further  
23 explanations. Mr. Giannini can ask you more  
24 question if he wants. So he handcuffs you  
25 behind your back, and as you standing there

1 you are in pain and you said you passed out?

2 A I fainted.

3 Q You fainted?

4 A Never happened in my life.

5 Q And you fell on the ground?

6 A Fell on the ground.

7 Q You woke up still on the  
8 ground, when you came to you were still on  
9 the ground?

10 A Yes.

11 Q And Officer Trotta came and  
12 picked you up?

13 A No.

14 Q Officer Trotta never picked you  
15 up?

16 A Yes, he did pick me up but not  
17 then.

18 Q And he walked away and spoke to  
19 the women in the other car?

20 A Correct.

21 Q And what point during the time  
22 did you scream, "Fuck you, you fucking  
23 assholes, I am not moving my car," or, "Fuck  
24 you fucking assholes fuck you, better get  
25 another Officer down here," or, "fuck you I

1 are doing and that would put their families  
2 in jeopardy such as cancer, yes.

3 Q And while you were screaming  
4 and yelling and cursed was your girlfriend  
5 there?

6 A Not during the main part of the  
7 episode, no.

8 Q But you did scream and curse  
9 and used the word, "Fuck," while your  
10 girlfriend was there?

11 A After she arrived not much, no  
12 I was pretty much spent. I had no energy, I  
13 was fighting for my life.

14 Q Well you had no energy because  
15 you had screamed, "Fuck," so many times  
16 prior to that and in that struggle --

17 A I did not --

18 THE COURT: He asked you a  
19 question, sir.

20 A No, no, he -- that is not what  
21 it's from. That is not why I was out of  
22 energy. I was out of energy --

23 Q I just asked if that is what  
24 you did?

25 A Okay.



1 feet and tap the window and kick the door?

2 A I couldn't move my feet at all.

3 Q This is before they restrained  
4 your legs?

5 A Couldn't move my legs.

6 Couldn't move my feet, they were frozen. My  
7 pants were frozen to my legs.

8 Q Now at some point you were  
9 released from the precinct and you went to  
10 the doctor and the doctor supposedly went  
11 home and your girlfriend took pictures. Do  
12 you recall what time of day your girlfriend  
13 took the pictures?

14 A Five or six in the evening.

15 Q And are those the photos that  
16 you looked at that are in evidence?

17 A Correct. They were taken first  
18 after the incident and the injuries were  
19 much worse the next day and the bruises  
20 continued to grow.

21 Q What do you mean, "the bruises  
22 continued to grow"?

23 A I was injured severely until  
24 the first week of July. Everyday was a  
25 strain. Going to work -- just trying.

1 THE COURT: I think you have  
2 answered the question.

3 Q At no point during any of this  
4 did you raise your voice in anger --  
5 withdrawn.

6 You at no point raised your  
7 voice until much later when you were on the  
8 ground?

9 A I never raised my voice until  
10 after I was cuffed and um, after I was  
11 cuffed, when I came to my senses from  
12 fainting on the ground and started to yell  
13 loudly for help.

14 Q And at some point during this  
15 the police officers brought you a jacket?

16 A No.

17 Q At no point an Officer gave you  
18 a jacket?

19 A No.

20 MR. MACDONNELL: I have no further  
21 questions, Your Honor.

22 THE COURT: Mr. Giannini.

23 REDIRECT EXAMINATION

24 BY MR. GIANNINI:

25 Q So, the first time you used any

1 curse words you were under arrest and  
2 handcuffed, correct?

3 A Correct.

4 Q And in pain?

5 A Correct.

6 Q And as a result of the incident  
7 and injuries you suffered that day did  
8 anything unusual happen to your urine?

9 A Oh, yes.

10 Q What was that?

11 A Blood was found. Quite a bit  
12 of blood was found in my urine.

13 Q Who found that blood?

14 A Dr. Kerr.

15 Q Did you decide using curse  
16 words to plead with them to loosen the  
17 cuffs?

18 A I pleaded with them well before  
19 I ever used any curse words.

20 Q Did it feel like you were being  
21 tortured?

22 MR. MACDONNELL: Objection.

23 THE COURT: Sustained.

24 Q Have you will experienced pain  
25 like that before that incident?

1 MR. MACDONNELL: Objection.

2 THE COURT: Overruled.

3 A Not that extreme. Nothing like  
4 that.

5 Q Could you tell us how long you  
6 were cuffed that day?

7 A I was cuffed -- when they  
8 brought me back to the precinct they kept  
9 the cuffs on me in the cell.

10 Q I just want to know how long?

11 A Approximate three hours.

12 Q Did you loose the feeling in  
13 your hands?

14 A For weeks.

15 Q You used the term, "Working me  
16 over," what do you mean by that?

17 A Well Barry Johnson took my arms  
18 and just by twisting your arms, doing  
19 anything beyond worked against the cuffs.  
20 He shoved my arms as hard as he could over  
21 my head down on the hood preventing me from  
22 breathing and screaming into my ear and I  
23 was doing everything I could just to  
24 maintain.

25 Q Are you saying that they pushed

1 your handcuffed arms toward your head?

2 A And almost broke my shoulder  
3 but besides that while he was screaming in  
4 my ear, holding my twisted arms over my  
5 head, he kept knocking the back of my knees  
6 so I would drop.

7 Q What did he knock the back of  
8 your knees with?

9 A His knees.

10 Q His knees.

11 MR. GIANNINI: I have no further  
12 question.

13 MR. MACDONNELL: I don't have  
14 anything else, Your Honor.

15 THE COURT: Thank you. You are  
16 excused.

17

18

\*

\*

\*

19 The foregoing minutes are hereby certified to be a true  
20 and accurate transcript of the proceedings herein.

21

22

23

24

25

Gloria E. Rosante, Court Reporter